

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

DOGM
MINERALS PROGRAM
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IN THE MATTER OF:)

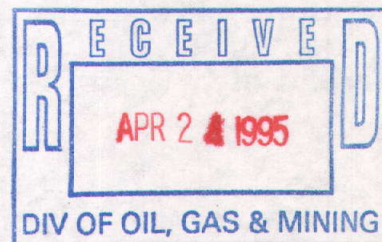
LEEDS SILVER RECLAMATION SITE)
SITE NO. X8)
LEEDS, WASHINGTON COUNTY, UTAH)

RESPONDENTS:)

5M, INCORPORATED)
KERLEY MINING CHEMICALS, INC.)
AND TECH-SYM CORPORATION)

PROCEEDING UNDER SECTIONS 104,)
106(a), 107, AND 122)
OF THE COMPREHENSIVE ENVIRONMENTAL)
RESPONSE, COMPENSATION, AND)
LIABILITY ACT, AS AMENDED)
42 U.S.C. §§ 9604, 9606(a))
9607, AND 9622.)

EPA Docket No. ____



ADMINISTRATIVE ORDER ON CONSENT
FOR REMOVAL ACTION

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ATTACHMENTS

- Exhibit 1. Statement of Work
- Exhibit 2. Preferred Plan Remediation Report

I. INTRODUCTION

1. This Administrative Order on Consent (Order) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and 5M, Incorporated, Kerley Mining Chemicals, Inc., and Tech-Sym Corporation (Respondents). This Order concerns the performance of a removal action by Respondents and reimbursement of response costs incurred by the United States in connection with the Leeds Silver Reclamation site (Site) in Leeds, Washington County, UT.

II. JURISDICTION

2. This Order is issued under the authority vested in the President of the United States by sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) (CERCLA). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12,580, 52 Fed. Reg. 2,923 (1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-A, 14-14-C, and 14-14-D. This authority has been further delegated to the Chief, Emergency Response Branch, Hazardous Waste Management Division, EPA Region VIII.

3. Respondents agree to undertake all actions required by this Order. In any action by EPA or the United States to enforce terms of this Order, Respondents consent to and agree not to contest the authority or jurisdiction of EPA to issue or enforce this Order, and agree not to contest the validity of this Order or its terms.

III. PARTIES BOUND

4. This Order shall be binding upon Respondents and their agents, successors, assigns, officers, directors, and principals and upon EPA. Respondents are jointly and severally responsible for carrying out all actions required of them by this Order. No change in the ownership or corporate or other legal status of Respondents or of the facility or site shall alter Respondents' responsibilities under this Order.

5. During the period in which this Order is in effect, Respondents shall provide a copy of this Order to any subsequent owners or successors before any interest in property, stock, or assets is transferred. Respondents shall provide a copy of this Order to all contractors and laboratories retained to conduct any work under this Order, within five (5) days after the effective date of this Order or at least five (5) days before retaining their services, whichever is later. Respondents shall condition any such contracts upon satisfactory compliance with this Order.

Notwithstanding the terms of any contract, Respondents are responsible for compliance with this Order and for ensuring that their subsidiaries, employees, contractors, agents, and attorneys comply with this Order.

IV. DEFINITIONS

6. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or such regulations. For purposes of this Order, the following terms shall have the meanings set forth below.

"Contractor" means any person, including the contractors, subcontractors, consultants, or agents, retained or hired by Respondents to undertake any work under this Order.

"Day" means calendar day, unless otherwise specified. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business on the next working day. Time will be computed in accordance with Rule 6 of the Federal Rules of Civil Procedure, unless otherwise specified.

"Deliverable" means any written product, including, but not limited to, plans, reports, memoranda, data, or other documents that Respondents must submit to EPA under this Order.

"NCP" means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated under section 105 of CERCLA, 42 U.S.C. § 9605, and codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Order" means this Order, the exhibits attached to this Order, and all documents or modifications to documents incorporated into this Order according to the procedures set forth herein. If there is a conflict between this Order and any documents incorporated into this Order, the terms of the Order shall control.

"Site" means the Leeds Silver Reclamation site, including the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of the response action.

"Statement of Work" or "SOW" means the Statement of Work which is attached hereto as Exhibit 1 and incorporated herein by reference.

"Work" means all tasks Respondents are required to perform under this Order.

"Work Plan" means the detailed work plan implementing the requirements of this Order incorporated herein by reference. The work plan includes the work plan itself, the sampling and analysis plan, and any other plans or modifications thereto described in the SOW or approved by EPA pursuant to this Order.

V. STATEMENT OF PURPOSE

7. The objectives of EPA and Respondents are for Respondents: (a) to perform, with EPA oversight, a removal action consistent with CERCLA and the NCP to protect public health and welfare and the environment; and, (b) to reimburse the United States for response costs incurred by the government with respect to the site.

8. The activities conducted under this Order are subject to approval by EPA and shall be conducted in compliance with CERCLA, the NCP, and all applicable EPA guidance, policies, and procedures and any amendments to CERCLA, the NCP, or EPA guidance, policies, or procedures.

VI. FINDINGS OF FACT

Site Location and Characteristics

9. The Leeds Silver Reclamation Site is located at the North 1/4 Corner of Section 12, Township 41 South, Range 14 West, Salt Lake Baseline and Meridian in Washington County, UT. Leeds, UT, (population 254) is approximately one mile southeast of the Site along the east side of Interstate 15. The town of Silver Reef is located within one mile north of the Site, and the community of St. George is a few miles south. A residential housing development is located south of the site, with the nearest house about one-half mile from the site.

10. Prior to 1977, mining and milling operations were conducted at the Site. The Site is currently an inoperative ore processing facility which formerly utilized an acid heap leach process for the extraction of copper and silver. The main feature of the Site is a centrally located pile of crushed ore, underlain by an asphalt pad. This pad covers an area of approximately 3.8 acres and, in conjunction with the ore, is referred to as a heap leach pad. The asphalt leach pad and ponds were constructed around 1978 and the facility was in operation through 1983. Copper and silver sandstone ores were processed via acid heap leach operations. The metal-bearing (pregnant) solution flowed downslope along the pad and ultimately drained into the pregnant pond. The solution was pumped from the pond,

and copper, silver, and other metals were recovered. Below the pregnant pond, is an overflow pond. During the period August 23, 1984, through October 31, 1985, Site operations were conducted by Kerley Mining & Chemicals, Inc., who drilled 27 exploratory holes and assayed samples from the low-grade ore stockpiles which were created during prior mining activities.

11. South of the overflow pond, is a wetland basin that contains runoff from the Site if the ponds overflow.

12. North of the leach pad is a 1.3 acre ore stockpile and south of this stockpile, about half the distance to the leach pad, are three 72-gallon electrical transformers. Three electrical transformers are also present in the mill area which covers approximately 0.5 acres in the southwest corner of the Site. A warehouse and test area, associated with on-site operations, is located approximately 1000 feet northeast of the processing area. This warehouse also contains several transformers.

Release or Potential Release of Hazardous Substances

On-Site sources of hazardous substances are the leach pile, and the pregnant and overflow ponds. Samples of soils, surface waters, and subsurface waters were collected and analyzed.

13. The heap leach pile contains copper at 2080 mg/kg, selenium at 7.1 mg/kg, silver at 61 mg/kg, vanadium at 202 mg/kg, zinc at 615 mg/kg, and mercury at 97.3 mg/kg.

14. Sample analysis results from the collection pond and overflow pond showed the presence of hazardous substances up to the following concentrations in the leachate: barium at 47 ug/L; cadmium at 170 ug/L; manganese at 260,000 ug/L; copper at 410,000 ug/L; mercury at 520 ug/L; silver at 2,600 ug/L; and zinc at 55,000 ug/L.

15. Mercury concentrations ranged from 0.15 to 2.1 mg/kg in the sediment of the two collection ponds and increased to 84 and 140 mg/kg, respectively, in the Leeds Creek diversion sediment and wetland sediment.

16. The wetland is already serving as a sink to the on-site source material, and the small reservoirs or wetland that receive surface water from the Site are becoming contaminated with mercury up to 500 mg/kg, copper at 850 mg/kg, zinc at 140 mg/kg, selenium at 6.6 mg/kg, arsenic at 34 mg/kg, and barium at 250 mg/kg. Quail Creek Reservoir lies only a short distance downstream. This reservoir may become a sink for hazardous substances from the Site if the other reservoirs or wetland do not stop the runoff before it reaches Quail Creek Reservoir during Spring storm events.

17. X-ray fluorescence (XRF) spectrophotometer screening and soil/sediment sampling results show that: 1) high levels of metal contamination are in the sediment in the overflow pond with concentrations of barium at 114 mg/kg, copper 1,700 mg/kg, mercury at 2.1 mg/kg, selenium at 5 mg/kg, vanadium at 130 mg/kg and zinc at 150 mg/kg; 2) the wetland serves as a sink for hazardous substances as evidenced by the sample results discussed in paragraph 16; 3) there is a high concentration (10 mg/kg) of mercury in the irrigation pond sediment relative to other ponds, which indicates that off-site migration is also occurring; 4) the pregnant and overflow ponds are characterized by low Ph (2.2 and 3.4 Ph units, respectively), and high conductivity (203.4 and 29.2 ppt, respectively) [conductivity and salinity data, in conjunction with the abundant precipitates, indicate high concentrations of dissolved materials are present in the water column]; and, 5) the perched pond and Leeds Creek diversion exhibit elevated conductivity and salinity which suggests that some of the process waste may have been received by these areas.

18. During late winter/early spring of 1993, the Leeds area experienced heavy rains, creating flash floods in certain areas. Such seasonal storm events are not uncommon and could result in a catastrophic release of hazardous substances from the Site.

19. PCBs are present in the transformers on-site. Laboratory analysis of a sample of transformer oil confirmed the presence of chlorinated compounds in the form of 230 mg/kg of Aroclor 1260.

20. The 5-gallon containers buried on-site contain substances which have a flash point of 40.5°C/105°F. These substances are ignitable wastes/flammable materials and are therefore hazardous wastes as defined in 40 CFR Part 261.21.

21. A rusted steel tank contains a material with a Ph of 0, indicating a very corrosive material.

Endangerment

22. Old roads and footpaths crisscross the Site, and signs of public ingress/egress are evident. Motorcycle riding, horseback riding, four-wheel driving, and hiking may occur on and near the Site on a daily basis. There is no fence or other structure that inhibits any type of public access to the Site. A significant potential for continued human/animal exposure to hazardous substances exists due to actual or potential: 1) direct access and trespassing on the areas of the Site where hazardous substances exist; 2) airborne migration of hazardous substances from the Site to nearby housing developments; 3) migration of hazardous substances from the Site into the regional groundwater; and, 4) migration of hazardous substances off-site to ponds, wetlands, wells, and other surface water which is used

for domestic purposes, lawn and garden irrigation, and livestock water.

23. The most significant run-off of hazardous substances comes from the leach pad and is ponded in the acidic water pond and overflow pond at the south end of the Site. The extremely acidic water (lowest recorded pH is 2.2, a RCRA-characteristic waste) may pose an acute health risk to children or other individuals trespassing on the Site. Water with hydrogen ion concentrations this high may cause skin irritation or burns and may cause persistent or permanent damage to the eyes if contact were to occur. Additionally, the acidic pH in the pond is likely to solubilize heavy metals in the sediment and carry them to the groundwater. Thus the pond serves as a recharge area for heavy metals into the groundwater.

24. Sampling results show that both sediment and water in the Site ponds are acutely toxic to the test organisms and likely toxic to the test organisms indigenous to the Site. The magnitude of the toxicity indicates that a release of the sediment and/or water from these ponds would result in environmental damage. Elutriate prepared from the sediment mimics a catastrophic release from the pregnant or overflow ponds. The results of a toxicity evaluation of elutriate indicate that such a release would result in significant ecological damage. Toxicity evaluations of pH-adjusted matrices also indicate that acute toxicity was not the result of acidic conditions alone, but that other factors related to conductivity and hardness (i.e., metal concentrations) contribute to toxicity.

25. At least one of the transformers on-site was confirmed to contain PCB contaminated oil; the other transformers probably also contain PCBs. The warehouse floors and walls, as well as the transformers, are contaminated with PCBs. In humans, exposure to PCBs has been associated with chloracne, impairment of liver function, a variety of neurobehavioral symptoms, menstrual disorders, minor birth abnormalities, and an increased incidence of cancer. PCBs are bioaccumulated and can be biomagnified. Their toxicity increases, therefore, with length of exposure and position of the exposed species on the food chain. Three primary ways in which PCBs can affect terrestrial wildlife are by causing outright mortality, adversely affecting reproduction, and changing behavior.

26. Direct contact with the highly corrosive waste in the rusted steel tank on the south side of the Site could be expected to cause irritation of skin, mucous membranes, eyes, and throat. Contact with the corrosive waste could cause severe or permanent tissue damage, particularly since the corrosive waste will react with moisture in the mucous membranes to produce heat and attack living tissue. Since access to the steel tank is unrestricted,

any trespasser may come in direct contact with this corrosive material.

27. Wildlife in adjacent habitats may be exposed to on-site contamination either through direct contact with contaminated soil, standing water, and sediments, or indirectly through consumption of organisms (algae, aquatic insects, or animals) feeding in the area. Acidic pH in the ponds poses a significant threat to wildlife in the area, and acidic runoff from the ponds may enter downstream wetlands during storm events, causing severe ecological stress in these areas.

28. The U.S. Department of Interior Fish and Wildlife Service (USFWS) conducted a field review of the Site on February 10, 1993. USFWS listed the following endangered and threatened species as potentially impacted at this Site: Virgin River Chub; Woundfin Minnow; Desert Tortoise; Peregrine Falcon; Relict Leopard Frog; and Virgin Thistle.

Identification of Respondents

29. The title and potentially responsible party (PRP) search for the Leeds Silver Reclamation Site disclosed that:

- A. Respondent 5M, Incorporated acquired and operated the Site since August, 1977. 5M, Inc., is a current owner and was an owner and operator at the time hazardous substances were disposed of;
- B. Respondent Tech-Sym Corporation acquired and operated the Site from May 1966 through August 1977, and was a past owner and operator at the time hazardous substances were disposed of; and,
- C. Respondent Kerley Mining Chemicals, Inc. operated the Site from August 1984, through October 1985, and was a past operator at the time hazardous substances were disposed.

VII. CONCLUSIONS OF LAW AND DETERMINATIONS

30. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

- A. The Leeds Silver Reclamation Site is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

- B. The substances found at the Site, as identified in the Findings of Fact above, include "hazardous substance(s)" as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- C. Each Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- D. Respondents may be liable parties under sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622;
- (1) Respondent 5M, Inc., is an "owner" and/or "operator" of the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
 - (2) Respondent 5M, Inc., was an "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
 - (3) Respondent Tech-Sym Corporation, was an "owner" and/or "operator" of the facility at the time of disposal of hazardous substances at the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
 - (4) Respondent Kerley Mining Chemicals, Inc., was an "operator" of the facility at the time of disposal of hazardous substances at the facility and a "generator" of hazardous substances, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of sections 107(a)(2) and 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(2) and § 9607(a)(3).

31. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).

32. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial

endangerment to the public health, welfare, or the environment within the meaning of section 106(a) of CERCLA, 42 U.S.C. § 9606(a). The conditions present at the facility meet the criteria for undertaking a removal action as described in section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended, 40 CFR Part 300 ("NCP"). These criteria include, but are not limited to, the following:

- A. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants;
- B. actual or potential contamination of drinking water supplies or sensitive ecosystems;
- C. hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;
- D. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;
- E. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; and,
- F. threat of fire or explosion.

33. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP or CERCLA.

VIII. NOTICE TO STATE

34. EPA has notified the state that this Order is being issued and that EPA is the lead agency for coordinating, overseeing, and enforcing the response action required by the Order.

IX. WORK TO BE PERFORMED

35. Respondents shall perform the Work set forth in the Statement of Work shown in Exhibit 1. This Work includes the preparation of a work plan which details the performance and implementation schedule of the removal action. In summary, the Work to be performed includes:

- A. After the Bureau of Reclamation (BOR) grades and compacts the stockpile areas to post-settled slope of 3%, and places the geosynthetic membrane,

Respondents shall move and place cover material as specified by the BOR's "Preferred Plan" and the draft design plans, attached hereto and incorporated by reference as Exhibit 2;

- B. Respondents shall remove and dispose, pursuant to the requirements of the Toxic Substances Control Act (TOSCA), the PCB transformers and contaminated concrete and debris in the warehouse;
- C. Respondents shall excavate the buried 5-gallon cans of ignitable waste, overpack the cans, and dispose of the wastes pursuant to the requirements of the Resource Conservation and Recovery Act (RCRA) Subtitle C Regulations;
- D. Respondents shall place in drums the corrosive material in the tank to the south of the Site and dispose of the drums pursuant to RCRA Subtitle C Regulations; and,
- E. Respondents shall empty and rinse tanks containing process residue. The contents shall be treated by evaporation or solidification. Solids shall then be incorporated into the heap for capping. Rinsate shall be treated and discharged.

36. Respondents shall conduct activities and submit deliverables as provided by this Order and approved by EPA. All work is to be conducted in accordance with the schedule set forth in Exhibit 1 of this Order and the standards, specifications, schedules, and other requirements of this Order, the SOW, and any work plan or work plan amendment approved by EPA.

37. Within thirty-seven (37) calendar days after the effective date of this Order, the Respondents shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall be prepared in accordance with EPA's current Standard Operating Safety Guide, dated November 1984, and currently updated July 1988, but must use the latest version if different. In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. Respondents shall incorporate all changes to the plan recommended by EPA, and implement the plan during the pendency of the removal action.

38. All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. EPA requires that certain documents be developed and approved by EPA before

the initiation of field activities. These documents include the Quality Assurance Project Plan (QAPjP) or QA Sampling Plan (QASP) and the Health and Safety Plan (HASP). Respondents shall ensure that the laboratory used to perform any analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondents shall utilize the following documents, as appropriate, as guidance for QA/QC and sampling: "Guidelines and Specifications for Preparing Quality Assurance Project Plans (QAMS-005/80)"; "Emergency Response Branch Region VIII Quality Assurance Project Plan (ERB Region VIII QAPjP)"; "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08. At a minimum, the sixteen elements listed in QAMS-005/80 shall be addressed. All data generated during the Work must be validated. The data validation procedures and levels which must be integrated are described in detail in the ERB Region VIII QAPjP.

39. Upon request by EPA, Respondents shall have such a laboratory analyze samples submitted by EPA for quality-assurance monitoring. Respondents shall provide to EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

40. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing work under this Order. Respondents shall notify EPA not less than seven (7) calendar days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

41. All work under this Order shall be under the direction and supervision of qualified personnel. On or before the effective date of this Order, and before work begins, Respondents shall notify EPA in writing of the names, titles, and qualifications of the personnel, including contractors and laboratories, to be used in carrying out such work. The qualifications of the persons undertaking work for Respondents shall be subject to EPA's review for verification that such persons meet minimum technical background and experience requirements. This Order is contingent on Respondents' demonstration to EPA's satisfaction that Respondents are qualified to perform properly and promptly the actions set forth in this Order. If EPA disapproves in writing of any person(s)' qualifications, Respondents shall notify EPA of the identity and qualifications of the replacement(s) within (7) days of the written notice. If EPA subsequently disapproves of the replacement(s), EPA reserves the right to terminate this Order,

conduct all or part of the removal action, and seek reimbursement of costs from Respondents. During the course of work, Respondents shall notify EPA in writing (14) days in advance of any changes or additions in the personnel used to carry out such work, providing their names, titles, and qualifications. EPA shall have the same right to approve changes and additions to personnel as it has hereunder regarding the initial notification.

42. EPA reserves the right to comment on, modify, and direct changes for all deliverables. Respondents must fully correct all deficiencies and incorporate and integrate all information and comments, as directed by EPA, within (7) days of receipt of EPA comments unless otherwise specified in the schedule set forth in Exhibit 1. At the time any revised document is submitted, Respondents shall submit a cover letter describing how each EPA comment was addressed and a certification that no changes were made other than those identified in the cover letter. Failure to incorporate or address any EPA comment or modification or to identify any other changes made is a violation of this Order. EPA may unilaterally modify any deliverable if Respondents fail to make the required changes.

43. Respondents shall not perform any physical on-site activity under this Order until receiving EPA approval for such activity. While awaiting EPA approval, Respondents shall proceed in accordance with the schedule set forth in this Order with all other tasks and activities which may be conducted independently of the physical on-site activity that has not been approved.

44. If, after receiving EPA comments, Respondents conduct an activity or amend or revise a deliverable in a way that does not fully reflect EPA's directions for changes, EPA retains the right to seek stipulated or statutory penalties, perform its own studies or cleanup and seek reimbursement from Respondents for its costs, and/or seek other relief.

45. Neither failure of EPA to expressly approve or disapprove Respondents' submissions within a specified time period, nor the absence of comments, shall be construed as approval by EPA.

46. No later than (14) days prior to any off-site shipment of hazardous substances and/or hazardous wastes from the site for disposal, Respondents shall provide written notification, as described below, to the appropriate state environmental official in the receiving state and to the EPA Project Coordinator of such shipment.

- A. The identity of the receiving facility will be determined by Respondents. Respondents shall provide all relevant information, including the information specified in subparagraph B, as soon

as practical after a decision is reached, but in no event later than (14) days prior to any off-site shipment.

- B. This notification shall be in writing, and shall include the following information: (1) the name and location of the facility to which the hazardous substances or wastes are to be shipped; (2) the type and quantity of the hazardous substances or wastes to be shipped; (3) the expected schedule for the shipment; and, (4) the method of transportation. Respondents shall notify the receiving state of major changes in the shipment plan, such as a decision to ship the hazardous substances or wastes to another facility within the same state, or to a facility in another state no later than (72) hours prior to shipment.

X. MODIFICATION OF WORK

47. If, at any time before termination of this Order, Respondents identify a need for additional data, Respondents shall submit a memorandum documenting the need for additional data to the EPA Project Coordinator within (7) days of such identification. EPA, in its discretion, will determine whether the additional data will be collected by Respondents and whether it will be incorporated into deliverables.

48. In the event of unanticipated or changed circumstances at the site, Respondents shall notify the EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. If the unanticipated or changed circumstances pose an immediate threat to human health or welfare or the environment, Respondents shall notify EPA and the state immediately. If EPA determines that the immediate threat or the unanticipated or changed circumstances warrant changes in the work to be performed, EPA may modify or amend or direct Respondents to modify or amend the work accordingly or take other actions authorized by CERCLA or the NCP. Respondents shall perform the work as modified or amended.

49. EPA may determine that work in addition to tasks defined in the SOW or Work Plan may be necessary to accomplish the objectives of the removal action as set forth in Section V of this Order. EPA may require that Respondents perform such additional work, if it determines that such work is necessary to complete the removal action. Respondents shall either confirm their willingness to perform the additional work in writing to EPA within (7) days of receipt of the EPA request or invoke dispute resolution pursuant to Section XVI of this Order. Subject to EPA resolution of any dispute, Respondents shall implement the additional tasks which EPA determines are

necessary. The additional work shall be completed according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the SOW or Work Plan or written Work Plan supplement. EPA reserves the right to conduct the additional work itself at any point, to seek reimbursement from Respondents, and/or to seek any other appropriate relief.

XI. PROGRESS REPORTS AND MEETINGS

50. During the course of work under this Order, Respondents shall submit the following reports to EPA.

- A. Weekly Construction Reports. Beginning one week after approval of the work plan and during physical on-site conduct of the removal action, Respondents shall prepare weekly reports discussing, at a minimum: progress made during the reporting period; problem areas and resolved/recommended solutions; deliverables submitted; schedule update if necessary; activities planned for the next reporting period; key personnel changes, if any; sampling/laboratory activities describing samples collected, analyses requested, analytical results received, and audits performed; and coordination activities. The weekly report shall be compiled and delivered to EPA each Thursday.
- B. Monthly Progress Reports. Respondents shall also prepare monthly progress reports containing the following information:
 - (1) Actions taken to comply with this Order, including plans and actions completed during the preceding month;
 - (2) Activities during the preceding month that deviated from or were carried out in addition to those planned;
 - (3) All problems encountered and any anticipated problems, any actual or anticipated delays, and solutions developed and implemented to address any actual or anticipated problems or delays;
 - (4) Work planned for the next month with schedules relating such work to the overall project; and,
 - (5) All results of sampling and tests and all other data collected or received by Respondents during the preceding month.

Respondents shall submit these reports to EPA on or before the first Thursday of every month for the preceding month, beginning on the first Thursday of the first month after approval of the Work Plan.

C. Final Report. Respondents shall submit a detailed report documenting the work performed under this Order within 60 days of completion of the removal action.

D. Operation and Maintenance (O&M) Reports.

Respondents shall prepare O&M reports that include the following elements:

(1) A description of O&M activities performed during the previous calendar quarter;

(2) A description and summary of the results of all monitoring performed in connection with the removal action; and,

(3) An appendix containing all validated data and supporting documentation collected during the previous quarter.

Respondents shall submit these reports on or before the 10th day of January, April, July, and October.

51. Respondents shall make presentations at and participate in meetings at the request of EPA during the initiation, conduct, and completion of the removal action. In addition to discussion of the technical aspects of the removal action, topics may include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion.

52. EPA is responsible for conducting community relations with respect to the site. Respondents shall cooperate with EPA in providing information regarding implementation of this Order to the public. If requested by EPA, Respondents shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the site.

XII. ACCESS, SAMPLING, AND AVAILABILITY OF INFORMATION

53. EPA, the state, and their authorized representatives may enter and freely move about all property at the site and off-site areas where work, if any, is being performed, for the purposes of inspecting conditions, activities, the results of activities, records, operating logs, and contracts related to the

site or Respondents and their contractor(s) pursuant to this Order; reviewing the progress of Respondents in carrying out the terms of this Order; conducting tests as EPA or its authorized representatives deem necessary; using a camera, sound recording device, or other documentary type equipment; and verifying the data submitted to EPA by Respondents. Respondents shall allow these persons to inspect and copy all records, files, photographs, documents, sampling and monitoring data, and other writings related to work undertaken in carrying out this Order. Nothing herein shall be interpreted as limiting or affecting EPA's or the state's right of entry or inspection authority under federal law.

54. If the site or any off-site area needed for conduct of the removal action is owned in whole or in part by parties other than those bound by this Order, Respondents will obtain, or use their best efforts to obtain, written site access agreements from the owner no later than (7) days prior to the time such access is needed. Such agreements shall provide access for EPA, the state, and their authorized representatives and Respondents or their authorized representatives. Such agreements shall specify that Respondents are not EPA's or the state's representative with respect to liability associated with site activities. Copies of such agreements shall be provided to EPA prior to Respondents' initiation of field activities. Respondents' best efforts shall include providing reasonable compensation to any off-site property owner.

55. If access agreements are not obtained within the time referenced above, Respondents shall promptly notify EPA of their failure to obtain access. EPA may, but is not required to, obtain access for Respondents, perform those tasks or activities with EPA contractors, or terminate the Order in the event that Respondents cannot obtain access agreements. In the event that EPA performs those tasks or activities that require such access with EPA contractors and does not terminate the Order, Respondents shall perform all other activities not requiring access to that area, and shall reimburse EPA for all costs incurred in performing such activities. Respondents additionally shall integrate the results of any such tasks undertaken by EPA into their deliverables. Respondents agree to indemnify the United States as specified in Section XXIII of this Order. Respondents shall reimburse EPA for all costs and attorney fees incurred by the United States to obtain access for Respondents in accordance with Section XIX of this Order.

56. All results of sampling, tests, modeling, or other data (including raw data) generated by Respondents, or on Respondents' behalf, during implementation of this Order, shall be submitted to EPA and the state in the monthly progress report as described in Section XI of this Order. EPA will make available to

Respondents validated data generated by EPA unless it is exempt from disclosure by any federal or state law or regulation.

57. Respondents will notify EPA and the state in writing at least (7) days prior to mobilizing or conducting significant field events as described in the SOW, work plan, or sampling and analysis plan. At the verbal or written request of EPA or the state and/or their authorized representatives, Respondents shall allow EPA or the state and/or their authorized representatives to collect whatever samples EPA or the state deem necessary, including split or duplicate samples of any samples collected by Respondents in implementing this Order.

58. By entering into this Order, Respondents waive any evidentiary objections to any data gathered, generated, or evaluated by EPA, the state, or Respondents in the performance or oversight of the work that has been verified according to EPA-approved quality assurance/quality control procedures. If Respondents object to any other data relating to the removal action, Respondents shall submit to EPA a report that identifies and explains their objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA within (15) days of the monthly progress report containing the data or within (15) days of receipt of the data from EPA, whichever is applicable.

59. Respondents shall provide to EPA and the state, upon request, copies of all documents and information within their possession or control or that of their contractors relating to activities at the site or to the implementation of this Order, including, but not limited to, sampling, analyses, chain-of-custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, personal logs of Respondents' on-site representatives, or other documents or information related to the work. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the work.

60. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Such claims shall be asserted in the manner described by 40 C.F.R. § 2.203(b) and substantiated at the time the claim is made. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondents that the documents or information are not confidential under the standards of section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7) or that

the documents are not found to be confidential under 40 C.F.R. Part 2, subpart B, the public may be given access to such documents or information without further notice to Respondents.

61. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data and materials or information submitted pursuant to this Order, or any other documents or information evidencing conditions at or around the site.

62. EPA will compile the administrative record file for the removal action. Upon EPA request, Respondents must submit to EPA documents developed during the course of work which may serve as the basis for selection of any response action. Respondents shall provide copies of plans, memoranda (including documentation of field modifications), recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports, and other reports. Respondents must additionally submit, upon request, any previous studies conducted under state, local, or other federal authorities relating to selection of the response action, and all communications between Respondents and state, local, or other federal authorities concerning selection of the response action. If EPA requests, Respondents shall establish a community information repository at or near the site to house a copy of the administrative record.

XIII. PROJECT COORDINATORS

63. EPA and, collectively, Respondents shall each designate their own Project Coordinator.

A. The EPA Project Coordinator is:

Pete Stevenson (8HWM-ER)
On-Scene Coordinator
EPA Region VIII
999 18th Street, Suite 500
Denver, CO 80202-2405
(303) 294-7058

B. Respondents' Project Coordinator is:

[Name, Title,
Organization,
Street, City, State, Zip Code
Telephone Number].

The Project Coordinator shall be responsible for overseeing the implementation of this Order. EPA and Respondents each have the right to change their respective Project Coordinator.

Respondents shall notify EPA in writing of the name, title, address, and telephone number of the new Project Coordinator at least (7) days prior to the change.

64. To the maximum extent possible, communications between EPA and Respondents shall be directed to the Project Coordinator. All written communications, including, but not limited to, all correspondence, approvals, disapprovals, and deliverables submitted under this Order shall be hand-delivered, sent overnight mail, or sent by certified mail, return receipt requested, to the Project Coordinators or to any other persons whom EPA may designate in writing. Documents submitted to EPA shall be sent in triplicate. Documents to be submitted to EPA shall also be sent to:

Jason L. Knowlton
State of Utah
Department of Environmental Quality
Division of Environmental Response and Remediation
1950 West North Temple
Salt Lake City, UT 84114-4840
(801) 536-4100

65. The EPA Project Coordinator shall have the authority vested in the Remedial Project Manager and the On-Scene Coordinator by the NCP. In addition, the EPA Project Coordinator shall have the authority, consistent with the NCP, to halt any work required by this Order and to take any action authorized by CERCLA or the NCP. The absence of the EPA Project Coordinator from the site shall not be cause for the stoppage or delay of work.

66. EPA may arrange for assistance in its oversight and review of the conduct of the removal action. EPA's authorized representative may observe work and make inquiries in the absence of EPA, but is not authorized to modify the requirements of this Order.

XIV. OTHER APPLICABLE LAWS

67. All activities undertaken by Respondents shall be in compliance with all federal, state, and local laws and regulations, including permit requirements, unless an exemption is provided by section 121(e) of CERCLA, 42 U.S.C. § 9621(e). Respondents shall identify and seek to obtain all permits, licenses, and approvals required for performance of work in sufficient time to perform work as scheduled.

XV. DOCUMENTATION AND RECORD PRESERVATION

68. Data and investigation information generated during the Work must be consistently well documented and managed. To

establish a complete and accurate record of project documents, Respondents shall maintain a Master File system for this project. The Master File shall contain one complete Site file of records, documents and information generated in performance of the Work, including working papers necessary to prepare the deliverables. All records and documents in Respondents' possession that relate in any way to the site shall be preserved while this Order is in effect and for a minimum of 10 years after termination of this Order. Respondents shall acquire and retain copies of all documents that relate to the site and are in the possession of their employees, accountants, contractors, or attorneys. After this 10-year period, Respondents shall notify EPA at least 90 days before the documents are scheduled to be destroyed. If EPA requests that the documents be saved, Respondents shall, at no cost to EPA, provide EPA with the documents or copies of the documents.

XVI. DISPUTE RESOLUTION

69. Any disputes concerning activities or deliverables required under this Order, for which dispute resolution has been expressly provided, shall be resolved as follows: If Respondents object to any EPA notice of disapproval or requirement made pursuant to this Order, Respondents shall notify the EPA Project Coordinator in writing of their objections within (7) days of receipt of the disapproval notice or requirement. Respondents' written objections shall define the dispute, state the basis of Respondents' objections, and be sent certified mail, return receipt requested, to the EPA Project Coordinator. EPA and Respondents then have an additional (7) days to reach agreement. Respondents shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondents agree with the decision. If Respondents do not agree to perform or do not actually perform the work in accordance with EPA's final decision, EPA reserves the right in its sole discretion to conduct the work itself, to seek reimbursement from Respondents, to seek enforcement of this Order, to seek stipulated penalties, and/or to seek any other appropriate relief.

70. Respondents are not relieved of their obligations to perform and conduct activities and submit deliverables on the schedule set forth in Exhibit 1 while a matter is pending in dispute resolution. The invocation of dispute resolution does not stay the accrual of stipulated penalties under this Order.

XVII. STIPULATED PENALTIES

71. For each day that Respondents fail to produce a deliverable of acceptable quality or in a timely manner, or otherwise fail to perform in accordance with the requirements of this Order, Respondents shall be liable for stipulated penalties.

Penalties begin to accrue on the day that performance is due or a violation occurs and extend through the period of correction. When a revised submission by Respondents is required, stipulated penalties shall continue to accrue until a satisfactory deliverable is produced. EPA will seek to provide written notice of violations that are not based on timeliness; nevertheless, penalties shall accrue from the day a violation commences. Payment shall be due within 30 days of receipt of a demand letter from EPA.

72. Stipulated penalties shall accrue in the following amounts for each day that Respondents fail to complete a deliverable in a timely manner, fail to produce a deliverable of acceptable quality, or otherwise fail to perform in accordance with the requirements of this Order:

<u>Period of Failure To Comply</u>	<u>Penalty Per Violation Per Day</u>
1st through 14th day	\$10,000
15th through 30th day	\$15,000
31st day and beyond	\$25,000

73. Respondents shall make all payments by forwarding a certified or cashiers check, made payable to the "Hazardous Substance Superfund," to:

Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
P.O. Box 360859
Pittsburgh, PA 15251-6859

or other such address as EPA may designate in writing. Payments must be identified as "Stipulated Penalties--Leeds Silver Reclamation site" and shall reference the payor's name and address, the EPA site identification number Site No. X8, and the docket number of this Order. Copies of the transmittal letter and check shall be sent to the EPA Project Coordinator at the time of payment.

74. Respondents shall pay interest on any unpaid balance, which shall begin to accrue at the end of the 30-day period, at the rate established by the Department of Treasury pursuant to 30 U.S.C. § 3717. Respondents shall further pay a handling charge of 1 percent, to be assessed at the end of each 31-day period, and a 6 percent per annum penalty charge, to be assessed if the penalty is not paid in full within 90 days after it is due.

75. Respondents may dispute EPA's right to the amount of penalties assessed by invoking the dispute resolution procedures

under Section XVIII herein. Penalties shall accrue but need not be paid during the dispute resolution period. If Respondents do not prevail upon resolution, all penalties and interest accrued shall be due to EPA within 30 days of resolution of the dispute. If Respondents prevail upon resolution, no penalties or interest shall be paid.

76. In the event that EPA provides for corrections to be reflected in the next deliverable and does not require resubmission of that deliverable, stipulated penalties for that interim deliverable shall cease to accrue on the date of such decision by EPA.

77. The stipulated penalties provisions do not preclude EPA from pursuing any other remedies or sanctions which are available to EPA because of Respondents' violation of or failure or refusal to comply with this Order. Such remedies and sanctions include, but are not limited to, the assessment of penalties pursuant to section 109 of CERCLA, 42 U.S.C. § 9609, the award of treble damages pursuant to section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), and conduct of all or part of the removal action by EPA. Payment of stipulated penalties does not alter Respondents' obligation to complete performance under this Order.

XVIII. FORCE MAJEURE

78. "Force majeure," for purposes of this Order, is defined as any event arising from causes entirely beyond the control of Respondents and of any entity controlled by Respondents, including their contractors, that delays the timely performance of any obligation under this Order notwithstanding Respondents' best efforts to avoid the delay. The requirement that Respondents exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring, and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under this Order or the financial difficulty of Respondents to perform such work.

79. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a force majeure event, Respondents shall notify by telephone the EPA Project Coordinator, or in his or her absence, the Director of the Hazardous Waste Management Division, EPA Region VIII, within 24 hours of when Respondents knew or should have known that the event might cause a delay. Within 5 days after Respondents knew or should have known that the event might cause a delay, Respondents shall provide in writing: (a)

the reasons for the delay; (b) the anticipated duration of the delay; (c) all actions taken or to be taken to prevent or minimize the delay; (d) a schedule for implementation of any measures to be taken to mitigate the effect of the delay; and, (e) a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Respondents shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of force majeure.

80. If EPA agrees that the delay or anticipated delay is attributable to force majeure, the time for performance of the obligations under this Order that are directly affected by the force majeure event shall be extended by agreement of the parties, pursuant to Section XXIV of this Order, for a period of time not to exceed the actual duration of the delay caused by the force majeure event. An extension of the time for performance of the obligation directly affected by the force majeure event shall not, of itself, extend the time for performance of any subsequent obligation.

81. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, or does not agree with Respondents on the length of the extension, the issue shall be subject to the dispute resolution procedures set forth in Section XVI of this Order. In any such proceeding, to qualify for a force majeure defense, Respondents shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondents did exercise or are exercising due diligence by using their best efforts to avoid and mitigate the effects of the delay, and that Respondents complied with the requirements of this section.

82. Should Respondents prevail in the dispute pursuant to the previous paragraph, the delay at issue shall not be deemed a violation of or failure or refusal to comply with this Order.

XIX. REIMBURSEMENT OF RESPONSE COSTS

83. On or before the effective date of this Order, Respondents shall pay \$53,484.64 to the United States as reimbursement of past response costs incurred with respect to the site.

84. After the end of each calendar year in which this Order is in effect, EPA shall submit to Respondents an accounting of response costs incurred by the United States in connection with this Order. Such costs shall include, but not be limited to, all

direct and indirect response costs incurred by the United States. The first accounting shall include costs incurred by the United States before the effective date of this Order that were not reimbursed as past costs under the previous paragraph. Respondents shall reimburse the United States for all uncontested response costs. Respondents' payment must be received by Mellon Bank by 1:00 pm EST on or before the payment due date. If the payment due date falls on a weekend or a federal holiday, full payment must be received by Mellon Bank before 1:00 pm EST on or before the last business day prior to the payment due date (see Paragraph 86.

85. The accounting described in the previous paragraph shall consist of a cost summary. If Respondents desire additional information, Respondents may request a copy of the SCORE\$ report (or its equivalent) and any additional summary information necessary to identify costs not included in the SCORE\$ report. The pendency of any such request shall not excuse Respondents from making any required payment at the time such payment is due. Respondents expressly waive the right to request additional documentation.

86. Respondents may contest payment of any cost under Paragraph 84 if they determine that the United States has made an accounting error or has included a cost item that is inconsistent with the NCP by initiating dispute resolution under Section XVI of this Order before payment is due. The written request for dispute resolution shall specifically identify the contested costs and provide a detailed explanation of the basis for the objection. In the dispute resolution process, Respondents bear the burden of proving that an accounting error has been made or that the costs are inconsistent with the NCP.

87. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Respondents, on or before the due date, shall pay the full amount of the contested costs into an escrow account in a bank duly chartered in the state. Respondents shall simultaneously transmit a copy of the check to the EPA Project Coordinator. If Respondents subsequently prevail in all or part of the dispute, Respondents may withdraw from the escrow account the amount upon which they prevailed in the dispute plus interest accrued on such amount. If Respondents do not prevail in all or part of the dispute, the full amount owed to EPA shall be withdrawn from the escrow account and this amount, plus interest calculated in accordance with Paragraph 89 of this section, shall be transmitted to EPA within three days after the completion of dispute resolution.

88. For all payments under this section, Respondents shall remit a certified or cashier's check, made payable to the "Hazardous Substance Superfund," to the following address:

Mellon Bank
EPA Region VIII
Attn: Superfund Accounting
Post Office Box 360859
Pittsburgh, PA 15251-6859

or other such address as EPA may designate in writing. Payments must be designated as "Response Costs--Leeds Silver Reclamation site" and shall reference the payor's name and address, the EPA site identification number Site No. X8, and the docket number of this Order. Copies of the transmittal letter and check shall be sent to the EPA Project Coordinator at the time of payment.

89. If payment is not received by Mellon Bank prior to 1:00 pm EST on the payment due date or, if the payment due date falls on a weekend or a legal federal holiday, by 1:00 pm EST on the last business day prior to the payment due date, interest shall accrue from the effective date of this Order for the costs specified in Paragraph 83, and from the date of transmittal of the accounting, for the costs specified in Paragraph 84. Interest shall accrue on the unpaid balance until such costs and accrued interest have been paid in full. The interest rate shall be the rate specified for interest on investments of the Hazardous Substances Superfund in section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Interest will be compounded annually. On October 1 of each subsequent fiscal year, any unpaid balance will begin accruing interest at a new rate to be determined by the Secretary of the Treasury.

90. The United States reserves its rights to bring an action against Respondents to enforce the cost reimbursement provisions of this Order, to seek penalties pursuant to section 109 of CERCLA, 42 U.S.C. § 9609, and to bring an action pursuant to section 107 of CERCLA, 42 U.S.C. § 9607, to recoup response costs set forth in the accounting not reimbursed by Respondents. EPA also reserves its rights to recover any past or future costs not reimbursed under this Order.

XX. RESERVATIONS OF RIGHTS

91. Except as expressly provided in this Order, each party reserves all rights and defenses it may have. Nothing in this Order shall affect EPA's removal authority or EPA's response or enforcement authorities including, but not limited to, the right to seek injunctive relief, stipulated penalties, statutory penalties, and/or punitive damages, nor shall preclude the United States from taking action to enforce this Order, nor from taking any action pursuant to CERCLA or any other available legal authority.

XXI. DISCLAIMERS

92. The execution and implementation of this Order by Respondents does not necessarily indicate agreement with EPA's Findings of Fact and Conclusions of Law. Furthermore, the participation of Respondents in this Order shall not be considered an admission of liability and is not admissible in evidence against Respondents in any judicial or administrative proceeding other than a proceeding by the United States, including EPA, to enforce this Order or a judgment relating to it. Respondents retain their rights to assert claims against other potentially responsible parties at the site. However, Respondents agree not to contest the validity or terms of this Order, or the procedures underlying or relating to it in any action brought by the United States, including EPA, to enforce its terms.

93. Nothing in this Order is intended to release any claims, causes of action, or demands in law or equity of any party against any entity not subject to this Order for any liability arising out of or in any way relating to the site.

XXII. OTHER CLAIMS

94. In entering into this Order, Respondents waive any right to seek reimbursement under section 106(b) of CERCLA, 42 U.S.C. § 9606(b), for costs reimbursed or work performed under this Order. Respondents also waive any right to present a claim under section 111 or 112 of CERCLA, 42 U.S.C. §§ 9611 or 9612. This Order does not constitute any decision on preauthorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Respondents further waive all other statutory and common law claims against the United States including, but not limited to, contribution and counterclaims, relating to or arising out of conduct of this removal action.

95. Nothing in this Order shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, subsidiary, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the site.

96. Respondents shall bear their own costs and attorneys fees.

XXIII. FINANCIAL ASSURANCE, INSURANCE, AND INDEMNIFICATION

97. Respondents shall establish and maintain a financial instrument or trust account or other financial mechanism acceptable to EPA, funded sufficiently to perform the work and any other obligations required under this Order, including a margin for cost overruns. On or before the effective date of this Order, Respondents shall fund the financial instrument or trust account sufficiently to perform the work required under this Order projected for the period beginning with the effective date of the Order through the end of the current calendar quarter year and on or before the 15th day of each calendar year quarter thereafter, Respondents shall fund the financial instrument or trust account sufficiently to perform the work and other activities required under this Order projected for the succeeding calendar year quarter.

98. If, at any time, the net worth of the financial instrument or trust account is insufficient to perform the work and other obligations under the Order for the upcoming quarter, Respondents shall provide written notice to EPA within 7 days after the net worth of the financial instrument or trust account becomes insufficient. The written notice shall describe why the financial instrument or trust account is funded insufficiently and explain what actions have been or will be taken to fund the financial instrument or trust account adequately. EPA reserves the right to terminate this Order if funding becomes or will become inadequate.

99. The United States shall not be liable for any injury or damages to persons or property resulting from acts or omissions of Respondents or their contractors in implementing the requirements of this Order.

100. Respondents agree to indemnify and hold the United States Government, its agencies, departments, agents, and employees, harmless from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, their employees, agents, servants, receivers, successors, or assigns, or any persons including, but not limited to, firms, corporations, subsidiaries, and contractors, in carrying out activities under this Order. The United States Government or any agency or authorized representative thereof shall not be held as a party to any contract entered into by Respondents in carrying out activities under this Order.

XXIV. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

101. The effective date of this Order shall be the date it is signed by EPA.

102. This Order may be amended by mutual agreement of EPA and Respondents. Amendments shall be in writing and shall be effective when signed by EPA. EPA Project Coordinators do not have the authority to sign amendments to the Order.

103. No informal advice, guidance, suggestions, assurances, or comments by EPA or its authorized representatives shall modify the terms and conditions of this Order or relieve Respondents of their obligations under this Order, including their obligations to obtain formal approvals. Any deliverables (other than progress reports), specifications, schedules, and work required by this Order are, upon written approval by EPA, incorporated into this Order. Any non-compliance with such EPA-approved documents shall be considered a violation of or failure or refusal to comply with this Order.

XXV. TERMINATION AND SATISFACTION

104. This Order shall terminate when Respondents demonstrate in writing and certify to the satisfaction of EPA that all activities required under this Order, including any additional work, payment of response costs, and payment of any stipulated penalties demanded by EPA, have been performed or paid and EPA has approved the certification in writing. This notice shall not, however, terminate Respondents' obligation to comply with any continuing obligation of this Order, including, but not limited to, those set forth in Sections II, XV, XXII, and XXIII of this Order.

105. The certification shall be signed by a responsible official representing each Respondent. Each representative shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate, and complete." For purposes of this Order, a responsible official is a corporate official who is in charge of a principal business function.

XXVI. SIGNATORIES AND COUNTERPARTS

106. The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Order and to execute and legally bind the parties they represent to this document.

107. This Order may be executed in any number of counterparts, each of which when executed and delivered to EPA shall be deemed to be an original, but such counterparts shall together constitute one and the same document.

IT IS SO AGREED:

RESPONDENTS

5M, INCORPORATED

BY: _____ DATE: _____

KERLEY MINING CHEMICALS, INCORPORATION

BY: _____ DATE: _____

TECH-SYM CORPORATION

BY: _____ DATE: _____

IT IS SO ORDERED AND AGREED:

ENVIRONMENTAL PROTECTION AGENCY, REGION VIII

BY: _____ DATE: _____

John R. Giedt, Chief
Emergency Response Branch